

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMANDA FRLEKIN, TAYLOR KALIN,
AARON GREGOROFF, SETH
DOWLING, and DEBRA SPEICHER, on
behalf of themselves and all others
similarly situated,

No. C 13-03451 WHA (lead)
No. C 13-03775 WHA (consolidated)
No. C 13-04727 WHA (consolidated)

Plaintiffs,

v.

**ORDER MODIFYING JOINT
DISSEMINATION PLAN**

APPLE INC., a California corporation,

Defendant.

In this wage-and-hour class action, the parties have submitted a joint plan for the dissemination of class notification (Dkt. No. 305). The parties raised three disputes relating to the plan. This order resolves those disputes and requires edits to certain additional sections of the proposed class notice. The parties shall modify the joint plan as described below and submit an updated plan by **AUGUST 10, AT NOON**.

DISPUTE 1: REGARDING “VOLUNTARY” LANGUAGE

Plaintiffs object to several descriptions of the “least common denominator” theory according to which class-wide litigation will proceed. In particular, plaintiffs object to language that describes the class-wide litigation as limited to the theory that all class members “voluntarily chose to bring bags and/or Apple technology to work purely for personal convenience.” That language accurately reflects this Court’s order certifying the class. Accordingly, the language in the class notice and summary shall remain as-is.

DISPUTE 2: REGARDING DISCOVERY OBLIGATIONS

Plaintiffs object to certain language describing potential class members' future discovery obligations. The proposed provision reads, "Additionally, if you do nothing, you may be called to testify in the lawsuit and your compensation records and other employment records may be disclosed to Class Counsel." The language shall be modified to read, "Additionally, if you do nothing (and thus remain a member of the class), you may be called to give evidence." Additionally, the subsections under the heading "The Consequences of Doing Nothing" should be re-numbered to reflect the inclusion of this provision.

DISPUTE 3: REGARDING WORK E-MAIL ADDRESSES

Apple objects to the provision in the proposed plan which requires it to provide the work e-mail addresses of all current employees to class counsel in addition to the third party notice administrator. By virtue of the appointment of class counsel, those employees that do not opt out of the class will be class counsel's clients. Accordingly, Apple shall provide those e-mail addresses to class counsel as well as the third party notice administrator.

MODIFICATION TO DESCRIPTION OF INTERVENTION

The proposed descriptions of intervention do not adequately convey the consequences of intervention. In particular, it is not clear that intervenors will remain members of the class and may still benefit from class-wide settlement. Accordingly, the following alterations are necessary.

On page 2 of the proposed notice, the paragraph labeled 2, the text that reads "Ask the Court to allow you to join the action to assert an individual claim that you were required . . ." shall be altered to read "Ask the Court to allow you to join the action to assert an individual claim — while maintaining your status as a member of the class — that you were required . . ."

On page 4 of the proposed notice, between the sentence ending with "intervening" and the sentence beginning with "If you wish to join . . ." the following shall be added: "If you choose to intervene and assert your own individual claim, you will remain a member of the class."

On page 5 of the proposed notice, the sentence that reads, “You will be bound by the outcome of your individual claim” shall be replaced with the following: “If you choose to intervene and assert your own individual claim, you will remain a member of the class. If a settlement is reached with Apple on behalf of the class, you may have the right to receive compensation from Apple. If, however, the action proceeds to trial, you will be bound by the outcome of your individual claim.”

On page 1 of the Summary of Notice, the text that reads “join the Action to assert an individual claim if you contend you were required, for any reason, to bring a bag or personal Apple technology to work” shall be edited to read “join the Action to assert an individual claim (although you will also remain a member of the class) if you contend you were required, for any reason, to bring a bag or personal Apple technology to work.”

MODIFICATIONS REGARDING THE DISTINCTION BETWEEN “SPECIAL NEEDS” AND “LEAST COMMON DENOMINATOR”

The description of the “special needs” theory on page 3 of the proposed class notice is confusing and inaccurate. That paragraph shall be replaced with the following:

Plaintiffs will **NOT** assert that Apple must compensate Apple Employees for Checks when Apple Employees were required to bring bags and/or personal Apple due to any “special needs,” such as the need to carry prescription medication, feminine hygiene products. The class will litigate this case **EXCLUSIVELY** on the theory that class members voluntarily chose to bring bags and/or personal Apple technology to work purely for personal convenience.

On page 3 of the notice, the sentence that reads, “As required by the Order, Plaintiffs’ theory at trial will be that . . .” shall be edited to read, “Plaintiffs will litigate this case on the theory that . . .”

CORRECTIONS OF TYPOGRAPHICAL AND FORMATTING ERRORS

The parties should review the proposed notice and summary for typographical and formatting errors. On page 1 of the proposed notice, there is a quotation mark missing after the word Order. On page 2 of the proposed notice, there is a quotation mark missing after the word Complaint. On page 4 of the proposed notice, the heading “The Consequences of Intervening in the Action” should be reformatted so that it appears on the same page as the text that follows it.

Page 5 of the proposed notice includes two sentences missing spaces between them such that it reads "Action.Also." Throughout the proposed notice, the headings contained within boxes are inconsistently formatted. Some are shaded, some have an extra line, and some have punctuation. Please select one format for those headings and use it consistently.

SCHEDULE FOR DISSEMINATION OF NOTICE


The Court would prefer for the dissemination of notice to occur at least a week earlier than proposed, but if an earlier schedule is infeasible, the Court will reluctantly approve the proposed schedule for the dissemination of notice.

CONCLUSION

The parties shall submit an amended joint plan that reflects the modifications discussed above by **AUGUST 10, AT NOON.**

IT IS SO ORDERED.

Dated: August 3, 2015.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE